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**THE CITY OF NEW YORK**  
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October 18, 1999

Magalie Roman Salas  
Secretary  
Office of the Secretary  
Federal Communications Commission  
Room TW-B-204  
445 Twelfth Street S.W.  
Washington D.C. 20554

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Re: CC Docket No. 99-295

Dear Ms. Salas:

Please find enclosed an original and six paper copies (plus one copy on disk) of the Comments of the City of New York on Bell Atlantic's application for authorization to provide in-region interLATA service in New York State. I have enclosed a postage prepaid, self-addressed envelope for your use if you would be so kind as to return a copy of the enclosed with a stamped confirmation of receipt. I am also submitting today twelve copies of this document to Janice Myles of the Common Carrier Bureau. Thank you for your help in this matter.

Sincerely,

  
Bruce Regal

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List ABCDE 274

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Commenter: City of New York  
Applicant: Bell Atlantic  
State: New York

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of

Application by New York Telephone Company  
(d/b/a Bell Atlantic - New York), NYNEX Long  
Distance Company, and Bell Atlantic Global  
Network, Inc., for Authorization to Provide  
In-Region, InterLATA Services in New York  
Pursuant to Section 271 of the Telecommunications  
Act of 1996 to Provide In-Region, InterLATA  
Services in New York

**CC Docket No. 99-295**

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**COMMENTS OF THE CITY OF NEW YORK**

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Bruce I. Regal, Esq.  
Office of the Corporation Counsel of  
the City of New York  
100 Church Street  
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(212) 788-1327

Commenter: City of New York  
Applicant: Bell Atlantic  
State: New York

### COMMENTS

Over the past ten years, the City of New York (the "City") has granted franchises, in full compliance with the franchise provisions of the City's Charter, with ten different facilities-based telecommunications providers. The City's franchisees include large, established firms, such as MCI WorldCom and AT&T; major new participants in the telecommunications marketplace, such as Level 3, NextLink and MFN; telecommunications affiliates of cable television companies, such as Cablevision Lightpath and Time Warner Telecom; and smaller local entrepreneurs such as Urban Transport. The City continues to encourage, receive and process applications for yet additional franchises. The form of franchise agreement entered into with each of these franchisees enables the City to manage the complex task of accommodating these numerous competitors within the increasingly limited space available in the City's streets. These agreements also provide for a reasonable level of compensation to the City for the use of its rights of way (the City's standard franchise compensation rate is 5% of gross revenues).

Only one facilities-based telecommunications provider in the City has no City Charter compliant franchise: Bell Atlantic. Bell Atlantic claims the right to use the City's streets without a franchise agreement comparable to those entered into by ten other telecommunications providers. Bell Atlantic's claim relies on authority that has not been applicable in the City since 1898, based on Bell Atlantic's ostensible inheritance of supposedly grandfathered rights granted to nineteenth century telegraph and telephone company predecessors. On this Bell Atlantic theory, telecommunications providers who cannot trace a lineage back before 1898 must abide by the City's reasonable compensation and rights-of-way management obligations, but Bell Atlantic, by dint solely of its claim of ancient parentage, is immune forever from such obligations.

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As it happens, Bell Atlantic continues to operate in a very different manner, under different conditions, and with a very different scope of facilities, than the ten entities that have entered, as required, into modern franchise agreements with the City. Bell Atlantic continues to be the sole provider of ubiquitous telecommunications facilities linking millions of City residents and businesses, and it continues to operate, uniquely, as a regulated provider of universal telecommunications service, in effect the telecommunications provider of last resort, across the entire New York metropolitan area, with its enormous physical and economic complexities. The City believes that under these circumstances, the requirement that other telecommunications providers comply with fair and reasonable compensation and rights-of-way management obligations remains consistent with 47 U.S.C. Section 253, despite Bell Atlantic's unwillingness to date to meet similar obligations.<sup>1</sup>

However, the argument has been raised in some quarters that Bell Atlantic's continued claim, whatever its actual merits, of a perpetual immunity from reasonable compensation and rights-of-way management obligations legally binding on other telecommunications providers in the City, may in the long run be inconsistent with the core competitive goals of the 1996 Telecommunications Act and with the public interest, convenience and necessity. If the Commission agrees with such an argument, then the Commission can, should and must (in accordance with 47 U.S.C. Section 271 (d)(3)(C)) condition approval of Bell Atlantic's Section 271 application on Bell Atlantic's agreement to abide by the terms of the City's standard form of modern franchise agreement, terms already agreed to by numerous telecommunications providers. Such a condition would impose no delay on Bell Atlantic's entry into the long distance market. It would impose no requirements that have not already been

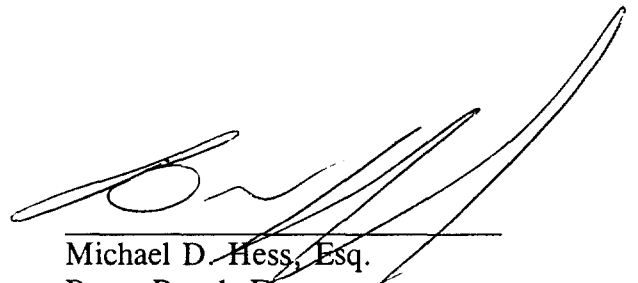
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<sup>1</sup> See *TCG Detroit v. City of Dearborn* 16 F.Supp. 2d 785 (E.D. Mich., 1998), in which fair and reasonable municipal franchise requirements imposed on a competitive local exchange company were upheld as consistent with 47 U.S.C. Section 253, although such requirements were not imposed on the incumbent local exchange company under circumstances similar to those applicable to Bell Atlantic in New York City.

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agreed to in arms-length negotiations with numerous telecommunications providers. Such a condition would be simple, straightforward and amenable to immediate compliance. To the extent the FCC accepts an argument that disparate franchise treatment between Bell Atlantic and other telecommunications providers is not or will not be in the public interest, the imposition of a simple condition that Bell Atlantic comply with the terms of the City's standard franchise agreement (as a condition to obtaining the tremendous new market power that will be associated with provision of in-region interLATA service in New York) would be not just appropriate but necessary.

Dated: October 18, 1999

A handwritten signature in black ink, appearing to read "Michael D. Hess", is written over a horizontal line. The signature is stylized with a large, sweeping flourish extending upwards and to the right.

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